Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

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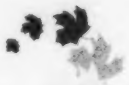
COMPLIANCE AND ENFORCEMENT POLICY FOR THE HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT*



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EXPLANATORY NOTE

The terms "deposit", "fish" and "fish habitat" appear many times in this Compliance and Enforcement Policy. For easy understanding of what these terms mean in the context of the *Fisheries Act*, you should know that the *Fisheries Act* defines:

"deposit" as any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing;

"fish" as (a) fish and parts of fish, (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals; and

"fish habitat" as spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

INTRODUCTION

Under the *Constitution Act, 1867*, the federal government of Canada is responsible for protecting and conserving the nation's fisheries resource and its supporting habitats. This responsibility includes protecting the intrinsic nature of the resource that will contribute to the preservation and enhancement of social, health and economic benefits derived by Canadians from fish habitats and the fisheries resource that those habitats support.

One of the principal tools available to the federal government to ensure sustainable fisheries for Canadians is the *Fisheries Act*. The *Act* provides the legal basis for protecting and conserving fish and fish habitat. Specifically, the habitat protection and pollution prevention provisions of the *Fisheries Act* include sections 20 through 22, 26 through 28, 30, 32, and 34 through 42, and are intended to protect fish and fish habitat from harm caused by physical alteration or pollution (a synopsis of these sections is presented in Annex A). These provisions are an important component of the federal government's overall environmental protection program.

However, laws and regulations are not sufficient in themselves; they must be administered and enforced in a fair, predictable, and consistent manner. Those who administer the laws and those who must comply with them need to understand how the government intends to achieve compliance with the legal requirements. For these reasons, this *Compliance and Enforcement Policy* has been developed for the habitat protection and pollution prevention provisions of the *Fisheries Act*.

The federal Minister of Fisheries and Oceans has the legislative responsibility for the administration and enforcement of the *Fisheries Act*. The Minister reports annually to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Act*. However, in 1978, the Prime Minister assigned to the Minister of the Environment responsibility for administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, which deal with the deposit of deleterious substances into water frequented by fish. In 1985 a Memorandum of Understanding between the Department of Fisheries and Oceans (DFO) and the Department of the Environment (DOE) was signed, outlining the responsibilities of DFO and DOE for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*. Therefore, this *Compliance and Enforcement Policy* has been developed jointly by DFO and DOE.

This *Compliance and Enforcement Policy* lays out general principles for application of the habitat protection and pollution prevention provisions of the *Fisheries Act*. The *Policy* explains the role of regulatory officials in promoting, monitoring and enforcing the legislation. It is a national *Policy* which applies to all those who exercise regulatory authority, from Ministers to enforcement personnel.

The *Policy* explains what measures will be used to achieve compliance with the *Fisheries Act* habitat protection and pollution prevention provisions. It sets out principles of fair, predictable, and consistent enforcement that govern application of the law, and responses by enforcement personnel to alleged violations. This *Policy* also tells everyone who shares a responsibility for protection of fish and fish habitat—including governments, industry, organized labour and individuals—what is expected of them.

Within five years of implementing the *Compliance and Enforcement Policy*, DFO and DOE will review the manner in which the *Policy* has been applied by their officials, to determine whether administration and enforcement activities have been consistent with the *Policy* and whether changes in these activities, or in the *Policy*, are required.

This document and its annexes are intended to provide general guidance only. They are not a substitute for the *Fisheries Act*. In the event of an inconsistency between this document and the *Act*, the latter prevails. Individuals with specific legal problems are urged to seek advice from legal counsel.

WHAT ARE COMPLIANCE AND ENFORCEMENT?

The terms "compliance" and "enforcement" are used many times throughout this *Policy*. For purposes of clarity, these terms are defined below.

Compliance means the "state of conformity" with the law. Regulatory officials will secure compliance with the habitat protection and pollution prevention provisions of the *Fisheries Act* through two types of activity: promotion and enforcement.

Measures to promote compliance include:

i) communication and publication of information;

ii) public education;

iii) consultation with parties affected by these provisions of the *Fisheries Act*; and

iv) technical assistance.

Enforcement is achieved through the exercise or application of powers granted under legislation. Enforcement of the habitat protection and pollution prevention provisions is carried out through the following activities:

i) inspections to monitor or verify compliance;

ii) investigations of alleged violations;

iii) issuance of warnings, directions by Fishery Inspectors, authorizations, and Ministerial orders, without resorting to court action; and

iv) court actions, such as injunctions, prosecution, court orders upon conviction, and civil suits for recovery of costs.

GUIDING PRINCIPLES

The following general principles govern application of the habitat protection and pollution prevention provisions of the *Fisheries Act*:

- Compliance with the habitat protection and pollution prevention provisions and their accompanying regulations is mandatory.
- Compliance will be encouraged through communication with parties affected by the habitat protection and pollution prevention provisions.
- Enforcement personnel will administer the provisions and regulations in a manner that is fair, predictable, and consistent. Rules, sanctions and processes securely founded in law will be used.
- Enforcement personnel will administer the provisions and accompanying regulations with an emphasis on preventing harm to fish, fish habitat or human use of fish caused by physical alteration of fish habitat or pollution of waters frequented by fish. Priority for action to deal with suspected violations will be guided by:
  - the degree of harm to fish, fish habitat or human use of fish caused by physical alteration of habitat or pollution of waters frequented by fish, or the risk of that harm; and/or
  - whether or not the alleged offence is a repeat occurrence.
- Enforcement personnel will take action consistent with this *Compliance and Enforcement Policy*.
- The public will be encouraged to report suspected violations of the habitat protection and pollution prevention provisions of the *Fisheries Act*.

JURISDICTION AND RESPONSIBILITIES

Jurisdiction

Under section 91 of the *Constitution Act*, 1867, the federal government has exclusive jurisdiction over the conservation and protection of Canada's sea coast and inland fisheries. The *Fisheries Act*, first passed by Parliament in 1868, is the federal statute promulgated pursuant to this constitutional authority.

The Department of Fisheries and Oceans has primary, and ultimate, responsibility for administration of the *Fisheries Act*, which includes responsibility for administration and enforcement of the provisions dealing with physical alteration of fish habitat. The Department of the Environment has been assigned responsibility for administration and enforcement of the *Fisheries Act* provisions dealing with the deposit of deleterious substances into water frequented by fish through a 1978 Prime Ministerial decision. A 1985 Memorandum of Understanding between DFO and DOE reiterated the responsibilities of both departments and set out mechanisms for information sharing and co-operation.

Provincial, territorial and municipal governments also have powers that can have an impact on fishery resources and fish habitat through their authority to deal with water pollution and land and water use activities (e.g., forestry, mining, agriculture, hydro-electric power developments).

In order to implement the habitat protection and pollution prevention provisions of the *Fisheries Act*, the federal, provincial and territorial governments may co-operate to promote compliance and enforce these provisions. This co-operation may include the designation of enforcement officials of these governments as Fishery Officers or Fishery Inspectors under the *Act*.

Authorities Responsible for Implementing the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

Minister of Fisheries and Oceans

The Minister of Fisheries and Oceans is the federal Minister accountable to Parliament for all sections of the *Fisheries Act*. The Minister has responsibility for making regulations under the *Act*; designating Fishery Officers, Fishery Guardians, Fishery Inspectors, and Analysts; exercising the discretionary powers under the *Act*; and issuing Ministerial orders.

Minister of the Environment

As explained above, the Minister of the Environment has the responsibility for administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

The assignment of administrative and enforcement authority with respect to subsection 36(3) does not include powers to make regulations, to appoint Fishery Officers, Fishery Guardians, Fishery Inspectors and Analysts, or to issue Ministerial orders. These powers rest with the Minister of Fisheries and Oceans.

Interdepartmental and Intergovernmental Co-operation

Administrative and enforcement activity by the Department of Fisheries and Oceans and the Department of the Environment may depend on working arrangements between the two federal departments at the regional level, or between DFO or DOE and a provincial or territorial agency. Those activities may also be governed by administrative agreements signed with provincial and territorial governments by the Minister of Fisheries and Oceans under the Department of Fisheries and *Oceans Act*. Where administrative agreements involve the pollution prevention provisions of the *Fisheries Act*, both the Minister of Fisheries and Oceans and the Minister of the Environment sign the document.

Personnel Who Are Involved in Compliance Promotion

Personnel from the Department of Fisheries and Oceans and the Department of the Environment carry out many activities intended to promote compliance, including developing guidelines and codes of practice and providing technical advice. These personnel may review proposals and referrals for new projects and provide technical advice on how to achieve compliance. They may also provide expert testimony in court to support prosecutions under the *Fisheries Act*.

Habitat Management personnel from DFO, on behalf of the Minister of Fisheries and Oceans, may authorize harmful alteration, disruption or destruction of fish habitat pursuant to subsection 35(2) of the *Act*. Project proposals that may affect fish habitat are received directly from proponents or through various referral processes from other government agencies. Habitat Management personnel review these proposals and provide technical advice on avoiding and/or mitigating potential effects on fish habitat; or where this is impossible and the proposal is nevertheless acceptable, advice on habitat compensation. Their activities are guided by the *Policy for the Management of Fish Habitat* (1986). Its operating (guiding) principle is "no net loss" of the productive capacity of fish habitats.

Enforcement Personnel

Enforcement personnel are individuals designated by the Minister of Fisheries and Oceans under the *Fisheries Act* as Fishery Officers or Fishery Guardians (section 5), or as Fishery Inspectors (section 38).

Powers of Fishery Officers and Fishery Guardians

Subject to limitations of their powers pursuant to subsection 5(1) of the *Fisheries Act*, Fishery Officers and Fishery Guardians are charged with enforcing all of the provisions of the *Fisheries Act*, including the habitat protection and pollution prevention provisions. However, they must exercise their powers in accordance with the requirements of the *Canadian Charter of Rights and Freedoms*. The enforcement powers of Fishery Officers and Fishery Guardians depend on whether they intend to conduct an inspection or a search. The main distinction between inspection and search will be discussed below.

Inspections

Inspection requires that a Fishery Officer or Fishery Guardian must have reasonable grounds to believe that there are activities or things that are subject to the *Act* or are relevant to its administration. In carrying out an inspection, the Fishery Officer or Fishery

Guardian is verifying compliance with the *Act* and is not undertaking a search in order to gather evidence of an alleged offence.

To ensure compliance with the *Act* and regulations, a Fishery Officer or Fishery Guardian may, therefore, enter and inspect any place in which the Fishery Officer or Fishery Guardian believes on reasonable grounds there is any work or undertaking or any fish or other thing to which the *Act* or regulations apply. Activities or things regulated by the *Act* may be in any place including any premises, vessel or vehicle. Entry does not require an inspection warrant. There is one exception. A Fishery Officer or Fishery Guardian may not enter any place, premises, vessel or vehicle that is a dwelling place, unless the occupant has given consent or unless they have obtained an inspection warrant.

To conduct an inspection, a Fishery Officer or Fishery Guardian may:

- open any container;
- examine any fish or other thing and take samples of it;
- conduct any tests or analyses and take any measurements;
- require any person to produce records or documents for examination;
- use or cause to be used any data processing system;
- reproduce or cause to be reproduced any print-out or intelligible output for examination or copying; and
- use or cause to be used any copying equipment.

A Fishery Officer or Fishery Guardian or anyone accompanying them, may enter on and pass through or over private property without being liable for trespass. In addition, a Fishery Officer has the power to authorize another person who may not be accompanying the Fishery Officer, to enter on and pass through or over private property.

Searches

Search requires the belief, on reasonable grounds, that an offence has been committed before a Fishery Officer may enter premises to search for evidence of an alleged offence. The officer may search for any thing that he or she believes on reasonable grounds will provide evidence of a violation of the *Act*, or that was used in connection with the commission of an offence against the *Act*. The Fishery Officer must conduct a search under the authority of a search warrant, except when exigent circumstances make it impracticable to obtain a warrant and, under those circumstances, the officer may enter and search without a search warrant. Under the *Fisheries Act*, exigent circumstances include situations in which the delay necessary to get a search warrant would result in danger to human life or safety or the loss or destruction of evidence.

In conducting a search, a Fishery Officer may exercise any of the powers that are described above under the heading "Inspections".

Although the *Fisheries Act* does not authorize a Fishery Guardian to conduct searches, a Fishery Guardian may do so pursuant to a search warrant obtained under subsection

487(1) of the *Criminal Code* or without a search warrant pursuant to section 487.11 of the *Code*. A Fishery Guardian may not conduct such searches if the Minister of Fisheries and Oceans imposes limits on the exercise of these powers when designating Fishery Guardians under subsection 5(1) of the *Fisheries Act*. Similarly, the Minister may impose limits on Fishery Officers when designating them.

Seizures

A Fishery Officer or Fishery Guardian may seize any thing that the Fishery Officer or Fishery Guardian believes on reasonable grounds was obtained by or used in connection with the commission of an offence against the *Act* or will afford evidence of an offence under the *Act*. The Fishery Officer or Fishery Guardian may use this power during an inspection or when investigating under the authority of a search warrant or without a search warrant in exigent circumstances. The Fishery Officer or Fishery Guardian may seize evidence in plain view as authorized by subsection 489(2) of the *Code*.

If the Fishery Officer or Fishery Guardian were to enter a place to carry out an inspection without any belief that an offence had occurred, and, during that inspection, came to the belief that there was a violation of the *Fisheries Act*, the Fishery Officer or Fishery Guardian would have three options:

- the Fishery Officer or Fishery Guardian may seize evidence in plain view; or
- if the Fishery Officer or Fishery Guardian wishes to search further and seize items that may not be in plain view, he or she must seek a search warrant; or
- the Fishery Officer or Fishery Guardian may search further and seize such items without a search warrant where there are exigent circumstances and it would be impracticable to obtain a warrant.

Arrests

Under authority of section 50 of the *Fisheries Act*, and subject to the limitations set out in section 495 of the *Criminal Code*, a Fishery Officer or Fishery Guardian may arrest, without warrant, a person who the Fishery Officer or Fishery Guardian believes, on reasonable grounds, has committed an offence against the *Act* or any of its regulations, or whom the Fishery Officer or Fishery Guardian finds committing or preparing to commit an offence against the *Act* or any of its regulations. Fishery Officers and Fishery Guardians are "peace officers" under the *Criminal Code* when performing any of their duties or functions pursuant to the *Fisheries Act* and are authorized in using as much force as is reasonably necessary for that purpose.

Generally, Fishery Officers and Fishery Guardians are employees of the Department of Fisheries and Oceans. The Minister of Fisheries and Oceans may also designate federal, provincial and territorial officials as Fishery Officers or Fishery Guardians.

Duty to Assist

Fishery Officers and Fishery Guardians must be given all reasonable assistance to enable them to carry out inspections and to exercise their inspection powers, and they must also be provided with any information relevant to the administration of the *Fisheries Act* or

the regulations that they may reasonably require. It is an offence not to do so. It is also an offence to obstruct Fishery Officers and Fishery Guardians when they are carrying out their duties or functions under the *Act*, including investigations and searches.

Powers of Fishery Inspectors

Generally, Fishery Inspectors are employees of the Department of Fisheries and Oceans or the Department of the Environment. In some cases, employees of other federal, provincial and territorial governments may also be designated Fishery Inspectors by the Minister of Fisheries and Oceans.

Fishery Inspectors' powers relate specifically to the pollution prevention provisions of the *Fisheries Act*. Fishery Inspectors, like Fishery Officers and Fishery Guardians, must also exercise their powers in accordance with the requirements of the *Canadian Charter of Rights and Freedoms*. The distinction between the terms "inspections" and "searches" that is discussed above under the heading "Powers of Fishery Officers and Fishery Guardians" also applies to the activities of a Fishery Inspector.

Inspections

Fishery Inspectors have the power to enter and inspect any place, premises, vehicle or vessel, except a private dwelling place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place. A Fishery Inspector does not require an inspection warrant to inspect. Unlike the authority given by the *Act* to Fishery Officers and Fishery Guardians, there is no authority for Fishery Inspectors to obtain an inspection warrant to inspect a private dwelling place.

To enter and inspect, a Fishery Inspector must have reasonable grounds to believe that there is an activity resulting, or likely to result, in a deposit of a deleterious substance: (a) in water frequented by fish; or (b) in any place under conditions where the deleterious substance or any other deleterious substance that results from the deposit of that deleterious substance may enter any water frequented by fish.

Fishery Inspectors may conduct inspections, including:

- examining any substance or product;
- taking samples of any substance or product;
- conducting tests; and
- taking measurements.

Searches and Seizures

Fishery Inspectors may enter and search for and seize any thing that the Fishery Inspector believes on reasonable grounds will afford evidence of an offence under the *Act* or was used in connection with the commission of an offence against the *Act*. They must do so under the authority of a search warrant authorized under subsection 38(3.2) of the *Fisheries Act* (search powers) or under subsection 487(1) of the *Criminal Code* (search and seizure powers), unless there are exigent circumstances where it would be

impracticable to obtain a warrant as authorized by subsection 487.11 of the *Code*. The Fishery Inspector may seize evidence in plain view as authorized by subsection 489(2) of the *Code*.

As stated earlier, under the *Fisheries Act*, exigent circumstances include situations in which the delay necessary to obtain the search warrant would result in danger to human life or safety or the loss or destruction of evidence.

A Fishery Inspector may exercise powers of search if that Fishery Inspector believes on reasonable grounds, during an inspection, that an offence has been, is being or is about to be committed.

Arrests

Fishery Inspectors are not authorized to arrest under the pollution prevention provisions of the *Fisheries Act*. Nor are they authorized to arrest under section 495 of the *Criminal Code*, since they are not peace officers.

Reporting and Directions

Anyone who owns, manages or controls a deleterious substance has a duty to report any deposit or danger of deposit out of the normal course of events to a Fishery Inspector or such other person or authority as is prescribed by the regulations.

In the case of deposit of a deleterious substance, or serious and imminent danger of deposit, a Fishery Inspector may take or direct remedial measures. Directions by Fishery Inspectors are further discussed in the chapter entitled "Responses to Alleged Violations".

Duty to Assist

Fishery Inspectors must be given all reasonable assistance to enable them to carry out their inspection duties and functions, and they must also be provided with such information relevant to the administration of section 38 of the *Fisheries Act* that they may reasonably require. It is an offence not to do so. It is also an offence to obstruct them when they are carrying out their duties or functions under the *Act*, including investigations and searches.

Attorney General of Canada and Officials

Generally, the Attorney General of Canada has responsibility for all litigation relating to the *Fisheries Act*.

While Fishery Officers, Fishery Guardians and Fishery Inspectors may lay charges for alleged offences under the *Act*, the ultimate decision on whether to proceed with prosecution of the charges rests with the Attorney General of Canada. However, in some provinces or territories, provincial or territorial officials that have been designated as Fishery Officers, Fishery Guardians and Fishery Inspectors may refer charges to the provincial or territorial Crown Attorney.

In these cases, responsibility for prosecution rests with the respective provincial or territorial Attorney General. With respect to an application for an injunction or a civil suit for recovery of costs in the various circumstances in which such recovery is allowed under the *Act*, enforcement personnel will recommend these civil actions to officials of the Attorney General. The legal counsel representing the Attorney General has the ultimate decision on proceeding with the injunction or civil suit for cost recovery.

Courts

The courts make the final decision regarding disposition of injunctions, prosecutions and civil suits brought by Her Majesty in Right of Canada, a province or a territory under the habitat protection and pollution prevention provisions of the *Fisheries Act*. They also have authority to impose penalties and/or court orders following the conviction of a *Fisheries Act* offender.

MEASURES TO PROMOTE COMPLIANCE

The Department of Fisheries and Oceans and the Department of the Environment believe that promotion of compliance through information, education and other means is an effective tool in securing conformity with the law. Many of the situations that threaten fish and fish habitat can be avoided by foresight and good planning. It is the responsibility of the proponent to obtain information regarding any proposed activity he or she undertakes which could have an impact on fish or fish habitat.

Accordingly, the departments will undertake public education and communication measures. Consultation will take place with other federal departments and agencies, provinces, the territories, municipal governments, industry, environmental groups, Aboriginal groups and other interested parties, so that information and concerns can be exchanged about the habitat protection and pollution prevention provisions, their accompanying regulations, as well as compliance promotion and enforcement practices (see Annex B for regulations and Annex C for guidelines and codes of practice).

Departmental officials will promote public awareness of this information using a combination of communication techniques, through activities such as:

- interacting formally and informally with industry;
- making presentations to various community groups and schools;
- preparing and distributing habitat protection and pollution prevention guidelines and codes of practice and policies;
- preparing and presenting educational and training materials, including audio-visual materials and films;
- encouraging community projects aimed at habitat protection and improvement;
- promoting stewardship, partnerships, and planning; and
- providing Internet and web site information.

Review of Works or Undertakings/Authorizations

The habitat protection and pollution prevention provisions of the *Fisheries Act* provide authority to issue "authorizations" for activities that would otherwise contravene the requirements of the legislation. In the case of the pollution prevention provision of the *Act* (section 36), authorizations for deposit of deleterious substances are issued only by or pursuant to regulations. Under subsection 35(2) of the *Act*, authorizations may be issued to allow for the harmful alteration, disruption or destruction of fish habitat.

Any person who proposes to carry out any work or undertaking that is likely to result in the harmful alteration, disruption or destruction of fish habitat and who wishes to have the work authorized by the Minister of Fisheries and Oceans under subsection 35(2) of the *Fisheries Act*, must first apply to the Minister. The form (Annex D) set out in Schedule VI of the *Fishery (General) Regulations* must be used for the purposes of requesting an authorization.

An authorization when given under subsection 35(2) of the *Fisheries Act* must be in the form (Annex E) set out in Schedule VII of the *Fishery (General) Regulations*.

Anyone who harmfully alters, disrupts or destroys fish habitat without an authorization is in contravention of the *Fisheries Act*. Anyone who conducts activities inconsistent with the conditions of an authorization is also in contravention of the *Fisheries Act*.

Education and Information

The Department of Fisheries and Oceans and the Department of the Environment will make available various materials related to enforcement and compliance, including:

- the *Fisheries Act* and the accompanying regulations (see Annex B for current general regulations); the *Fisheries Act*, including the pollution prevention and habitat protection provisions, is located on the Internet at: http://www.dfo-mpo.gc.ca/communic/policy/dnload_e.htm
- regulations pursuant to the *Fisheries Act* relevant to pollution prevention, located on the Internet at: http://www.ec.gc.ca/enforce/homepage/pollut/english/lstreg.htm
- the *Policy* for the Management of Fish Habitat, located on the Internet at: http://www.dfo-mpo.gc.ca/habitat/Policy/english/index_e.htm
- the Habitat Conservation and Protection Guidelines;
- the Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat, located at the Internet address for the *Fisheries Act*, and at: http://www.dfo-mpo.gc.ca/habitat/HADD/english/index_e.htm
- technical guidance documentation outlining methodologies on how to meet regulatory monitoring requirements, including Environmental Effects Monitoring (EEM);
- the *Compliance and Enforcement Policy*: http://www.ec.gc.ca/enforce/homepage/english/Fisheries_Act_compliance_e
- the *Annual Reports to Parliament on the Administration and Enforcement of the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act*, located at the Internet address for the *Fisheries Act*;
- information on completed court proceedings related to prosecutions and civil actions
- habitat inventory and planning documents, and
- fact sheets, handbooks, pamphlets and reports on subjects relevant to the habitat protection and pollution prevention provisions and their accompanying regulations.

Promotion of Technology Development and Evaluation

The Department of Fisheries and Oceans and the Department of the Environment will continue to co-operate with other federal departments and agencies, industry, and provincial and territorial governments to promote the development of new technology in Canada for the protection of fish habitat from physical impacts and for pollution prevention and control. The departments will also promote the evaluation of such technology used elsewhere, to facilitate its application to Canadian conditions.

Technology Transfer

The departments will continue to provide to other federal departments, other governments, other bodies and the private sector, technical information on:

- methodologies for fish habitat assessment, analysis, and effectiveness monitoring;
- fish habitat mitigation and compensation techniques;
- fish habitat restoration and development techniques;
- pollution control and abatement; and
- measures to prevent creation of pollution, and releases of deleterious substances into the environment.

The transfer of technology will be carried out through a number of means, including:

- publications, such as scientific and technical reports, and newsletters intended to promote exchange of information between governments and industry nationwide;
- seminars and conferences;
- training materials;
- joint government/private sector research projects;
- sale or licence, to the private sector, of technology developed by the federal government; and
- Internet sites.

Consultation on Regulation Development and Amendment

The federal government believes that more effective regulations are achieved through public consultation on regulatory proposals, particularly with individuals, companies and government agencies who will be subject to the legal requirements. The government also recognizes that compliance with regulations is significantly improved when there has been involvement by those parties in their development or amendment. Accordingly, the Department of Fisheries and Oceans and the Department of the Environment will consult with affected parties during regulation development and amendment.

Guidelines and Codes of Practice

The Department of Fisheries and Oceans will develop guidelines and codes of practice for the habitat protection provisions of the *Fisheries Act* using, where appropriate, a process of consultation with interested parties. Guidelines and codes of practice are designed to:

- provide general information respecting project design, including the construction, operation and abandonment phases of proposed activities or projects. Proponents will be advised in the guidelines and codes to seek specific advice with respect to specific projects; and
- assist the departments in reviewing specific plans for activities or projects with the potential to adversely affect fish or fish habitat.

Current guidelines and codes of practice are available at the DFO and DOE regional offices listed in Annex G.

Promotion of Environmental Audits

Environmental audits are internal evaluations by companies and government agencies, to verify their compliance with legal requirements as well as their own internal policies and standards. They are conducted by companies, government agencies and others on a voluntary basis, and are carried out by either outside consultants or employees of the company or facility from outside the work unit being audited. Audits can identify compliance problems, weaknesses in management systems, or areas of risk. The findings are documented in a written report.

The Department of Fisheries and Oceans and the Department of the Environment recognize the power and effectiveness of environmental audits as a management tool for companies and government agencies, and promote their use by industry and others.

To encourage the practice of environmental auditing, inspections and investigations under the habitat protection and pollution prevention provisions of the *Fisheries Act* will be conducted in a manner which will not inhibit the practice or quality of auditing. Enforcement personnel will not request environmental audit reports during routine inspections to verify compliance with the *Act*.

Access to environmental audit reports may be required when enforcement personnel have reasonable grounds to believe that:

- an offence has been committed;
- the audit's findings will be relevant to the particular violation, necessary to its investigation and required as evidence; and
- the information being sought through the audit cannot be obtained from other sources through the exercise of the powers of enforcement personnel.

In particular reference to the latter criterion, environmental audit reports must not be used to shelter monitoring, compliance or other information that would otherwise be accessible to enforcement personnel under the habitat protection and pollution prevention provisions of the *Act*.

Any demand for access to environmental audit reports during investigations will be made under the authority of a search warrant. The only exception to the use of a search warrant is exigent circumstances.

Compliance Monitoring

Compliance monitoring is conducted to verify that activities governed by the *Fisheries Act* are carried out in accordance with its provisions, regulations, directions by Fishery Inspectors, Ministerial orders and authorization requirements. Enforcement personnel will also verify compliance with injunctions and court orders issued under the *Act*. Compliance monitoring may also measure potentially harmful impacts on the environment associated with suspected violations of the *Act*.

Means to accomplish compliance monitoring include:

- inspections;
- mandatory reporting of information by regulatees in accordance with requirements under the *Act*, and its regulations, or in response to injunctions and court orders;
- sampling by enforcement officials of deleterious substances being deposited and products containing those substances; and
- monitoring of requirements of the *Act* and/or its regulations.

INSPECTION AND INVESTIGATION

Enforcement personnel will carry out two main types of enforcement activity under the habitat protection and pollution prevention provisions of the *Fisheries Act*: inspections and investigations.

Inspections

The purpose of an inspection is to verify compliance. The Department of Fisheries and Oceans and the Department of the Environment will carry out a program of inspections to verify compliance with the habitat protection and pollution prevention provisions of the *Fisheries Act*, related regulations and authorizations issued pursuant to those regulations, and authorizations issued pursuant to subsection 35(2).

The inspection program will be prioritized based on compliance history and the risk to fishery resources. Compliance with new regulations may also become an inspection priority. Inspection schedules are established to verify adherence to regulations, warnings, directions and orders by the Minister of Fisheries and Oceans, injunctions, and court orders upon conviction of an offender.

When information or complaints are brought to the attention of enforcement personnel, additional inspections will be carried out as required. In addition, the departments may develop special inspection schedules when companies or facilities undertake expansion or alteration of a process, or temporarily or permanently shut down.

Investigation

The purpose of an investigation is to gather evidence of a suspected violation. A Fishery Officer, Fishery Guardian or Fishery Inspector will conduct an investigation either:

- when there is suspicion that a violation has occurred; or
- when there are reasonable grounds to believe that an offence is being or has been committed.

In carrying out investigations, enforcement personnel are limited by the powers of search, seizure and arrest as set out in the *Act* and the *Criminal Code*.

RESPONSES TO ALLEGED VIOLATIONS

Enforcement measures are directed towards ensuring that violators comply with the *Fisheries Act* within the shortest possible time and that violations are not repeated.

Enforcement personnel will respond to suspected violations. They will take into account the harm or risk of harm to fish, fish habitat and/or human use of fish. If they determine that there is sufficient evidence a violation has occurred, they may take enforcement action.

Criteria for Responses to Alleged Violations

If enforcement personnel are able to substantiate that an alleged violation of the habitat protection or pollution prevention provisions of the *Act* has occurred and there is sufficient evidence to proceed, they will decide on an appropriate action, applying the criteria outlined below.

Nature of the Alleged Violation

Factors considered in assessing the nature of an alleged violation will include:

- the seriousness of the damage or potential damage to fish habitat, the fishery resource, or the risks associated with the human use of fish;
- the intent of the alleged violator;
- whether it is a repeated occurrence; and
- whether there were attempts by the alleged violator to conceal information or otherwise circumvent the objectives and requirements of the habitat protection and pollution prevention provisions.

Effectiveness in Achieving the Desired Result with the Alleged Violator

The desired result is compliance with the *Act* in the shortest possible time and with no further occurrence of violations, in order to protect fish and fish habitat and human use of fish. Factors to be considered include:

- the alleged violator's history of compliance with the habitat protection and/or pollution prevention provisions;
- the alleged violator's willingness to co-operate with enforcement personnel;
- evidence and extent of corrective action already taken; and
- the existence of enforcement actions by other federal or provincial/territorial authorities.

Consistency in Enforcement

Enforcement personnel aim to achieve consistency in their responses to alleged violations. Accordingly, they will consider how similar situations in Canada are being or have been handled when deciding what enforcement action to take.

Range of Responses to Alleged Violations

The following responses are available to deal with alleged violations of the habitat protection and pollution prevention provisions of the *Fisheries Act*:

- warnings;
- directions by Fishery Inspectors;
- orders by the Minister;
- injunctions; and
- prosecutions.

Warnings

Enforcement personnel may use warnings:

- when they have reasonable grounds to believe that a violation of the *Act* has occurred;
- where the degree of harm or potential harm to the fishery resource, its supporting habitat or to human use of fish appears to be minimal; and
- where the alleged violator has made reasonable efforts to remedy or mitigate the negative impact of the alleged offences on the fishery resource and its habitat.

In deciding whether to use warnings or another enforcement response, enforcement personnel may also consider:

- whether reasonable efforts have been taken to remedy or mitigate the negative consequences of the alleged offence or further offences;
- whether the alleged violator has a good history of compliance with the habitat protection and/or the pollution prevention provisions of the *Fisheries Act*; and
- whether sufficient action has been taken to ensure that future offences are not committed.

Warnings will be confirmed in writing and will contain the following information:

- the section of the *Act* or regulations involved;
- a description of the alleged offence; and
- a statement that, if the alleged violator does not take necessary action, enforcement personnel will consider taking other steps.

When enforcement officers use a warning, it brings an alleged violation to the attention of an alleged violator, in order to promote any necessary action by the recipient. Warnings do not have the legal force of an order. Furthermore, they are not a finding of guilt, civil liability or an administrative decision. Warnings and the circumstances to which they refer will form part of the records of either the Department of Fisheries and Oceans or the Department of the Environment, whichever department carried out the investigation. In addition, warnings will be taken into account in future responses to alleged violations, and may influence the frequency of inspection.

When an alleged violator receives a warning, they may wish to provide written comments to the Fishery Inspector, Fishery Officer or Fishery Guardian who signed the warning. These comments

will be placed in the compliance history file of the alleged violator, along with the warning. The comments will be taken into consideration by enforcement personnel and, where appropriate, a response will be provided.

Directions by Fishery Inspectors

Where there is a deposit of a deleterious substance out of the normal course of events to waters frequented by fish, or where there is serious and imminent danger of such an incident and immediate action is necessary, enforcement personnel who are appointed as Fishery Inspectors under the *Fisheries Act* may issue directions regarding remedial or preventative action to be taken by the alleged offender:

- who owns the deleterious substance;
- who has or had charge, management or control of the substance at the relevant time; or
- who caused or contributed to the deposit or the danger thereof.

Fishery Inspectors may issue a direction where immediate action is necessary to counteract adverse effects of a deposit of a deleterious substance or to prevent a serious and imminent deposit of a deleterious substance. The direction may require the person to take all reasonable measures, consistent with safety and the conservation of fish and fish habitat:

- to counteract, mitigate or remedy any adverse effects that result or may result from the incident; or
- to prevent a serious and imminent deposit of a deleterious substance out of the normal course of events.

As the *Fisheries Act* already imposes on persons the obligation to take such measures, a Fishery Inspector will not ordinarily issue such directions unless the obligation is not being met. The directions will be given in writing; however, during the initial response to a situation out of the normal course of events, directions may be given orally and later confirmed in writing.

Failure to comply with a direction by a Fishery Inspector may lead to prosecution of the individual, company, or government agency for such failure. Also, in the event of failure or inability to comply with a direction by a Fishery Inspector, the Fishery Inspector is empowered under the *Act* to take remedial measures.

Order by the Minister of Fisheries and Oceans

Under subsection 37(1) of the *Fisheries Act* the Minister of Fisheries and Oceans, or designate, may request plans, specifications, studies, procedures, schedules, analyses, samples or other information concerning any work or undertaking to enable the Minister to determine whether the work or undertaking results, or is likely to result, in harm to fish habitat or a deposit of a deleterious substance that constitutes or would constitute an offence under the *Act*. Failure to respond to the request within a reasonable time or within the date specified by the Minister may lead to prosecution.

If the Minister of Fisheries and Oceans, after examining information received under subsection 37(1), is of the opinion that an offence under the habitat protection and pollution prevention

provisions is being or is likely to be committed, the Minister, with the approval of the Governor in Council or if authorized by the regulations, may issue orders:

- requiring modifications of or additions to a work or undertaking or modifications to specifications, procedures or schedules related to the work or undertaking;
- restricting the operation of the work or undertaking; or
- only with the approval of the Governor in Council, closing the work or undertaking for a stipulated period of time.

The purpose of such orders under subsection 37(2) of the *Fisheries Act* is to prevent the occurrence or repetition of a violation of the habitat protection and pollution prevention provisions of the *Fisheries Act*. The Minister may resort to these types of orders where a violation of the habitat protection and pollution prevention provisions has occurred or seems likely to occur.

Failure to comply with an order may result in prosecution.

An order to close an operation will normally be used only where an order to modify or alter would not achieve compliance and prevent harm to the fish, or fish habitat, or both.

Ministerial orders may be used in conjunction with prosecutions. If the Minister, when issuing the order, has reasonable grounds to believe that a violation has, in fact, taken place, and if the offence giving rise to the order meets the criteria for prosecution listed below, initiation of prosecution proceedings will be recommended to the Attorney General.

Injunctions

The Attorney General has the authority to seek from the court an injunction in order to stop an alleged violation of the habitat protection and pollution prevention provisions of the *Fisheries Act*. Enforcement personnel will recommend injunctive action where continuation of the activity that is alleged to be a violation of the *Fisheries Act* constitutes a significant and immediate threat to fish or fish habitat, including when:

- a direction by a Fishery Inspector is not followed or is judged not to be suitable;
- an order by the Minister of Fisheries and Oceans will not address the problem in a timely fashion; or
- an order issued by the Minister is not being complied with.

In addition to seeking an injunction, the Crown may initiate:

- prosecution; or
- civil action for recovery of costs where the government was required to take action due to the failure of an alleged violator to comply with a direction issued under the habitat protection or pollution prevention provisions.

Inspections will be carried out to ensure that the alleged violator subject to the injunction is complying with its terms. If the party does not comply with the injunction, the Attorney General may apply to the court for enforcement of those terms.

Prosecution

Prosecution is the preferred course of action where evidence establishes that:

- the alleged violation resulted in risk of harm to fish or fish habitat;
- the alleged violation resulted in harmful alteration, disruption or destruction of fish habitat (not authorized by the Minister of Fisheries and Oceans);
- the alleged violator had previously received a warning for the activity and did not take all reasonable measures to stop or avoid the violation;
- the alleged violator had previously been convicted of a similar offence.

Enforcement personnel will examine each case to determine whether a warning, a direction by a Fishery Inspector, Ministerial order or injunction is the appropriate alternative to prosecution. Prosecution may still be the enforcement action chosen, in accordance with the criteria set out in "Responses to Alleged Violations", above.

Prosecution will always be pursued where evidence establishes that:

- there is evidence that the alleged violation was deliberate;
- the alleged violator knowingly provided false or misleading information to enforcement personnel;
- the alleged violator obstructed enforcement personnel in the carrying out of their duties or interfered with anything seized under the *Act*;
- the alleged violator concealed or attempted to conceal or destroy information or evidence after the alleged offence occurred; or
- the alleged violator failed to take all reasonable measures to comply with a direction or an order issued pursuant to the *Act*.

It is the role of the Attorney General to approve prosecutions based on evidentiary and public interest considerations. Alleged offences under the *Fisheries Act* can be prosecuted either by summary conviction or by indictment. The Crown prosecutor has the prerogative to select the type of prosecution after examining the facts and evidence of the case, and may take into account any recommendation by a Fishery Officer, Fishery Guardian or Fishery Inspector.

The onus is on everyone to be aware of the responsibilities concerning pollution prevention and protection of fish habitat. Information on these legal responsibilities is available from the Department of Fisheries and Oceans and the Department of the Environment through regional offices (listed in Annex G).

To secure a finding of guilt for an alleged violation of the habitat protection and pollution prevention provisions of the *Fisheries Act* or of regulations made under them, the Crown prosecutor must prove the accused guilty beyond a reasonable doubt. The prosecutor does not have to prove that the accused intended to violate the law. It is open to the accused to avoid a finding of guilt by establishing, on a balance of probabilities, that:

- they exercised all due diligence to prevent commission of the offence; or

- they reasonably and honestly believed in the existence of facts that, if true, would render their conduct innocent.

Summary proceedings under the *Fisheries Act* may be instituted at any time within two years after the time when the subject matter of the proceedings came to the attention of the Minister of Fisheries and Oceans. Enforcement personnel will bring any charges in as short a time as possible, having regard to the need for proper substantiation of the alleged violation and gathering of sufficient and appropriate evidence.

There are no such time limits when legal proceedings are initiated by way of indictment.

PENALTIES AND COURT ORDERS UPON CONVICTION

Fines and court orders may be imposed by a court upon conviction for offences under the habitat protection and pollution prevention provisions of the *Fisheries Act* (Annex F lists penalties for convictions under the *Fisheries Act*).

Recommendations for Sentencing

Upon conviction, enforcement personnel will recommend that Crown prosecutors request penalties that are proportionate to the nature and gravity of the offence. In preparing their recommendations, enforcement personnel will take into account:

- the nature of the violation and the benefit gained as a result;
- the number and nature of previous convictions by the offender;
- the effectiveness of the recommended penalty in deterring the violator from committing similar violations and ensuring compliance with the statute (specific deterrence);
- the prevalence of the same type of violation generally and any trends in the frequency of occurrence;
- sentencing precedents set by other courts in similar cases;
- the effectiveness of the recommended penalty in remediating the area of negative impact; and
- the effectiveness of the recommended penalty in addressing future protection of habitat, conservation of fish and fish habitat, and pollution prevention issues.

Use of Court Order upon Conviction

Upon conviction of an offender, enforcement personnel will recommend that the Crown request the court to impose an order under section 79.2 of the *Fisheries Act*. Under this section, a court may impose an order to achieve one or more of the following:

(a) prohibit the person from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;

(b) direct the person to take action to remedy or avoid any harm to any fish, fishery or fish habitat that resulted or may result from the commission of the offence;

(c) direct the person to publish in a manner acceptable to the court facts relating to the commission of the offence;

(d) direct the person to compensate the Minister for the costs of remedial or preventive actions;

(e) direct the person to perform community service;

(f) direct the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of conservation and protection of fish or fish habitat;

(g) direct the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement;

(h) direct the person to submit to the Minister on application, within three years after the date of conviction, any information respecting the activities of the person in question that the court considers appropriate in the circumstances; and

(i) require the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences.

Section 79.6 provides for penalties for non-compliance with a court order by a violator who fails to carry out all of the requirements of an order made pursuant to sections 79.2 or 79.3 of the *Fisheries Act*. Alternatively, a violator may be found in contempt of court. Contempt of court is a procedure by which the courts enforce compliance with their orders.

Courts can defer sentencing and allow a person convicted of an offence to restore a site to the specifications of regulatory authorities. This co-operation and the value of the work in restoring lost habitat can then be considered as a mitigating factor in sentencing proceedings.

CIVIL SUIT BY THE CROWN TO RECOVER COSTS

The *Fisheries Act*, section 42, allows the federal or a provincial or territorial government to recover costs by civil suit when those costs are incurred by the government (or by a provincial or territorial government) to prevent or correct harm caused to fish or to a fish habitat where there is an unauthorized deposit or serious and imminent danger of a deposit of a deleterious substance. It is possible to recover costs even in the absence of a prosecution or where a prosecution does not result in a conviction.

The federal government may also sue to recover costs (subsection 21(2)) incurred to construct, maintain, and operate fishways and canals.

The defendant in these cases could be the alleged violator who or that:

- owned or had charge or control of a deleterious substance immediately prior to its unauthorized deposit;
- caused or contributed to the deposit or the danger thereof; or
- obstructed a stream, or failed to take corrective action (including installation and maintenance of fishways, canals, or hatcheries) as ordered by the Minister of Fisheries and Oceans.

The Crown will attempt to obtain recovery of costs through negotiation with those responsible. In the event that negotiation is unsuccessful, the Crown will initiate or proceed with civil action under the *Fisheries Act*. The time limit imposed for the initiation of civil proceedings by the Crown to recover costs is at any time within two years after the occurrence for which recovery of the costs for preventive or corrective measures could reasonably be expected to have become known to the Crown.

ANNEX A

THE HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT*

Application

The *Fisheries Act* applies to "persons" who may be individuals or companies. It also applies to federal, territorial, and provincial government departments and agencies and their employees.

The following are brief descriptions of the habitat protection and pollution prevention provisions of the *Fisheries Act*. **This overview is not an official version of the law.**

Section 20 – Ensures safe passage for fish around obstructions to fish migration.
- Minister may require a fishway be constructed and maintained, and that adequate flows are provided to ensure fish passage.
- Where a fishway is not feasible, the Minister may require that a fish hatchery be established.

Section 21 – Where a fishway is constructed around obstructions to migration, the Minister may authorize payment of one half of the construction costs.
- The Minister of Fisheries and Oceans may construct a fishway and recover costs.

Section 22 – Ensures that water flows below water-control structures are maintained at a level that protects fisheries.
- The Minister may remove or destroy an obstruction to fish passage and recover costs.
- The Minister may require fish stops or diverters to be installed above and below an obstruction.
- Flows downstream of a dam, control structure or obstruction must be approved.

Section 26 – Requires that at least one third of a river or stream width is left unobstructed for fish passage.
- Minister may authorize the placement and maintenance of barriers, screens or other obstructions in streams to prevent the escape of fish.

Section 27 – Prohibits the damage or obstruction of fishways, the impediment of fish to fishways and fishing near the downstream entrance to a fishway.

Section 28 – Prohibits the use of explosives to hunt or kill fish.

Section 30 – Water diversions or intakes may require a fish guard or screen to prevent the entrapment of fish.
- Fish guards or screens must be approved by the Minister.

Section 32 – Prohibits the destruction of fish by means other than fishing without prior approval.
– This section is used to regulate the use of explosives in construction and seismic operations.

Section 34 – Definitions of deleterious substance, deposit, fish habitat, water frequented by fish, and regulations.

Section 35 – Prohibits works or undertakings that result in the harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations made by the Governor in Council (there are currently no regulations).
– This is the most frequently applied habitat protection provision of the *Act*, as it applies to most projects that have the potential to negatively affect fish habitat.

Section 36 – Prohibits the deposit of deleterious substances into waters frequented by fish unless authorized under regulations made by the Governor in Council.
– Provides for the Governor in Council to make regulations regarding the deposit of deleterious substances.
– The Minister may direct a person authorized to deposit a deleterious substance to conduct sampling, analyses, tests, measurements or monitoring that are required to determine if the deposits are being undertaken in the manner authorized.

Section 37 – Provides the authority to request plans and specifications for works or undertakings that have the potential to negatively affect fish and/or fish habitat.
– Subsection 37(2) provides the authority to order certain changes or restrictions or to close a work or undertaking with Governor in Council approval.

Section 38 – Minister may designate Fishery Inspectors and Analysts.
– Remainder of the section describes the power of Fishery Inspectors to carry out inspections and lists examples of activities that may comprise an inspection.

Section 40 – Specifies the fines and penalties for contravening sections 35, 36 and 37.

Section 42 – Describes the civil liability to Her Majesty and to fishers where a deposit of a deleterious substance occurs that is not authorized under section 36.

Sections 66, 69 and 78 – Describe offences and punishments under the *Act*.

Section 79 – Describes additional fines, other penalties and court orders under the *Act*.

ANNEX B

FISHERIES ACT REGULATIONS

1. Pulp and Paper

- Pulp and Paper Effluent Regulations, May 20, 1992
- Port Alberni Pulp and Paper Effluent Regulations, July 25, 1992

2. Chlor-Alkali Mercury

- Chlor-Alkali Mercury Liquid Effluent Regulations, published 1972, amended 1977, republished 1978 C.R.C. c.811

3. Petroleum Refineries

- Petroleum Refinery Liquid Effluent Regulations, published 1973, republished 1978 C.R.C. c.828

4. Metal Mining

- Metal Mining Liquid Effluent Regulations, published 1977, republished 1978 C.R.C. c.819
- Alice Arm Tailings Deposit Regulations, April 10, 1979

5. Meat and Poultry Products Plants

- Meat and Poultry Plant Liquid Effluent Regulations, published 1977, republished 1978 C.R.C. c.818

6. Potato Processing Plants

- Potato Processing Plant Liquid Effluent Regulations, published 1977, republished 1978 C.R.C. c.829

ANNEX C

GUIDELINES AND CODES OF PRACTICE RESPECTING THE HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT*

Guidelines and Codes of Practice are available on various issues, at regional DFO and DOE offices listed in Annex G.

ANNEX D

APPLICATION FOR AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT

See Schedule VI of the *Fishery (General) Regulations*.

Application Form to Harmfully Alter, Disrupt or Destroy Fish Habitat

SCHEDULE VI / ANNEXE VI
(Subsection 58(1)/paragraphe 58(1))

Fisheries and Oceans Canada / Pêches et Océans Canada

Application No./N° de la demande _____

APPLICATION FOR AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
DEMANDE D'AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

I, the undersigned, hereby request authorization to carry out the works or undertakings described on this application form. I understand that the approval of this application, if granted, is from the Minister of Fisheries and Oceans' standpoint only and does not release me from my obligation to obtain permission from other concerned regulatory agencies.

If an authorization is granted as a result of this application, I hereby agree to carry out all activities relating to the project within the designated time frames and conditions specified in the authorization.

Je soussigné, demande par les présentes l'autorisation d'exploiter les ouvrages ou entreprises décrits dans la formule. Je comprends que l'approbation de cette demande, le cas échéant, porte sur ce qui relève du ministre des Pêches et des Océans et ne me dispense pas d'obtenir la permission d'autres organismes réglementaires concernés.

Si la demande est approuvée, je consens par les présentes à exécuter tous les travaux relatifs à ce projet selon les modalités et dans le laps de temps prescrits dans l'autorisation.

Applicant's Name (please print) _____ Nom du requérant (lettres moulées)

Applicant's Business Address _____ Adresse d'affaires du requérant

_____

_____

Applicant's Telephone No./ N° de téléphone du requérant _____ Date _____

I solemnly declare that the information provided and facts set out in this application are true, complete and correct, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath. This declaration applies to all material submitted as part of this application.

Je déclare solennellement que les renseignements fournis et les faits énoncés dans cette demande sont véridiques, complets et exacts, et je fais cette déclaration solennelle, la croyant consciencieusement vraie et sachant qu'elle a la même force et le même effet que si elle était faite sous serment. Cette déclaration s'applique à tout document qui est présenté dans le cadre de cette demande.

_____ _____

Applicant's Signature (and corporate seal) Signature du requérant (et sceau de la société)

Name of watercourse or waterbody (give coordinates)
Cours d'eau ou plan d'eau (donner les coordonnées) _____

This watercourse is a tributary of (where applicable)
Cours d'eau tributaire de (le cas échéant) _____

Nearest community Localité la plus proche	County Comté	Province Province
_____	_____	_____

Application Form to Harmfully Alter, Disrupt or Destroy Fish Habitat (cont'd)

SCHEDULE VI – *Continued* / ANNEXE VI *(suite)*
(Subsection 58(1)/paragraphe 58(1))

Fisheries and Oceans Canada / Pêches et Océans Canada

Application No./N° de la demande

APPLICATION FOR AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
DEMANDE D'AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

Type of Activity/Genre d'activité

[ ] Bridge Pont	[ ] Stream Realignment Alignement de cours d'eau	[ ] Gravel Removal Enlèvement du gravier	[ ] Stream Traverse Traversée de cours d'eau
[ ] Culvert Ponceau	[ ] Channelization Canalisation	[ ] Obstruction Removal - Bypass Enlèvement ou contournement d'obstacle	[ ] Seismic Survey Levé sismique
[ ] Dam Barrage	[ ] Wharf - Breakwater Quai - Brise-lames	[ ] Stream Utilization - Recreation Utilisation récréative du cours d'eau	[ ] Agriculture
[ ] Stream Diversion Dérivation de cours d'eau	[ ] Dewatering Assèchement	[ ] Erosion Control Lutte contre l'érosion	[ ] Other (specify) Autres (préciser)
[ ] Mining Activité minière	[ ] Aquaculture	[ ] Flood Protection Protection contre les inondations	

List of agencies (federal, provincial or municipal) contacted or notified, or who have initiated contact with the applicant.
Liste des organismes (fédéraux, provinciaux ou municipaux) contactés ou qui ont pris contact avec le requérant.

_____

_____

_____

PROVIDE DETAILS OF PROPOSED ACTIVITY, INCLUDING REASONS FOR THE PROJECT AND TYPES OF EQUIPMENT TO BE USED
DONNER DES PRÉCISIONS SUR LES TRAVAUX PROJETÉS Y COMPRIS LA JUSTIFICATION DU PROJET ET LE TYPE D'ÉQUIPEMENT À UTILISER

_____

_____

_____

_____

_____

_____

SCHEDULE VI – *Continued* / ANNEXE VI *(suite)*
(Subsection 58(1)/paragraphe 58(1))

Fisheries and Oceans Canada / Pêches et Océans Canada

Application No./N° de la demande

APPLICATION FOR AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
DEMANDE D'AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

SCHEDULE/CALENDRIER

	D/J	M/M	Y/A
Proposed Starting Date Date prévue du début des travaux	_____	_____	_____
Proposed Completion Date Date prévue de l'achèvement des travaux	_____	_____	_____

Approximate Timing of Work in shoreline, foreshore, tidal zone, or underwater areas.
Période approximative des travaux sur le rivage et les estrans ainsi que dans les zones à marées et les zones sous-marines.

	D/J	M/M	Y/A		D/J	M/M	Y/A
From/De	_____	_____	_____	To/A	_____	_____	_____

The following documents will assist in assessing your application and help expedite its approval. Please check which documents you have attached.	**Les documents suivants faciliteront l'évaluation de votre demande et permettront d'accélérer son approbation. Veuillez cochez les documents vous avez joints à votre demande.**
Map Indicating Location of Project	[ ] Carte indiquant l'emplacement du projet
Engineering Specifications	[ ] Spécifications techniques
Scale Drawings	[ ] Dessins à l'échelle
Dimensional Drawings	[ ] Plans cotés
Assessment of Existing Fish Habitat Characteristics	[ ] Évaluation des caractéristiques existantes de l'habitat du poisson
Assessment of Potential Effects of Project on Fish Habitat	[ ] Évaluation des répercussions possibles sur l'habitat du poisson
Measures Proposed to Offset Potential Damage to Fish Habitat	[ ] Mesures proposées pour compenser les éventuels dommages à l'habitat du poisson
Other	[ ] Autres

ENVIRONMENTAL ASSESSMENT AND REVIEW PROCESS CONSIDERATIONS	**CONSIDÉRATIONS CONCERNANT LE PROCESSUS D'ÉVALUATION ET D'EXAMEN EN MATIÈRE D'ENVIRONNEMENT**
NOTE: All applications pursuant to section 35 of the *Fisheries Act* will be assessed in acordance with applicable federal environmental assessment requirements.	REMARQUE : Toute demande en vertu l'article 35 de la *Loi sur les pêches* sera soumise aux exigences fédérales applicables à l'évaluation environnementale.

SCHEDULE VI – *Continued* / ANNEXE VI *(suite)*
(Subsection 58(1)/paragraphe 58(1))

Fisheries and Oceans Canada / Pêches et Océans Canada

Application No./N° de la demande

APPLICATION FOR AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
DEMANDE D'AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

COMPLETE ONLY IF USE OF EXPLOSIVES IS INTENDED
A REMPLIR SEULEMENT EN CAS D'UTILISATION D'EXPLOSIFS

EXPLOSIVES CONTRACTOR (IF DIFFERENT FROM APPLICANT)/RESPONSABLE DES EXPLOSIFS (SI AUTRE QUE LE REQUÉRANT)

Name/Nom : _____

Address/Adresse : _____

_____

Telephone No./N° de téléphone : _____

	D/J	M/M	Y/A		D/J	M/M	Y/Y
Anticipated Starting Date Date prévue du début des travaux	_____	_____	_____	Completion Date Date d'achèvement	_____	_____	_____

DETAILS OF EXPLOSIVES/PRÉCISIONS SUR LES EXPLOSIFS

Type (including trade name)
Genre (y compris la marque _____

_____

Weight and configuration (where applicable)
Poids et forme (le cas échéant) _____

_____

Weight of individual shots and shot pattern where multiple charges are used
Poids des coups individuels et déploiement des coups, en cas de charges multiples _____

_____

_____

Detonation depth (in the rock; note also the depth of water, if applicable)
Profondeur de détonation (dans le roc; indiquer aussi, la profondeur de l'eau, s'il y a lieu) _____

_____

Method of detonation
Méthode de détonation _____

_____

_____

ANNEX E

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT

See Schedule VII of the *Fishery (General) Regulations*.

Authorization for the Harmful Alteration, Disruption or Destruction of Fish Habitat

SCHEDULE VII / ANNEXE VII
(Subsection 58(2)/paragraphe 58(2))

Fisheries and Oceans Canada / Pêches et Océans Canada

Authorization No./N° de l'autorisation

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

Authorization issued to:
Autorisation délivrée à :

Name: _____ Nom _____

Address: _____ Adresse : _____

Telephone No.: _____ N° de Téléphone : _____

Location of Project/Emplacement du projet

_____

_____

Valid Authorization Period/Période de validité de l'autorisation

From/De D/J _____ M/M _____ Y/A _____ To/A D/J _____ M/M _____ Y/A _____

Description of Works or Undertakings (Type of Work, Schedule, etc.)
Description des ouvrages ou entreprises (Genre de travail, calendrier, etc.)

_____

_____

_____

_____

_____

_____

Conditions of Authorization/Conditions de l'autorisation

_____

_____

_____

_____

_____

_____

_____

Authorization for the Harmful Alteration, Disruption or Destruction of Fish Habitat (cont'd)

SCHEDULE VII – *Continued* / ANNEXE VII*(suite)*
(Subsection 58(2)/paragraphe 58(2))

Fisheries and Oceans Canada / Pêches et Océans Canada

Authorization No./N° de l'autorisation

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT
AUTORISATION POUR DES OUVRAGES OU ENTREPRISES MODIFIANT L'HABITAT DU POISSON

Conditions of Authorization *(continued)*/Conditions de l'autorisation *(suite)*

The holder of this authorization is hereby authorized under the authority of section 35(2) of the *Fisheries Act*, R.S.C., 1985, c. F-14, to carry out the work or undertaking described herein.

This authorization is valid only with respect to fish habitat and for no other purposes. It does not purport to release the applicant from any obligation to obtain permission from or to comply with the requirements of any other regulatory agencies.

Failure to comply with any condition of this authorization may result in charges being laid under the *Fisheries Act*.

This authorization form should be held on site and work crews should be made familiar with the conditions attached.

Le détenteur de la présente est autorisé en vertu du paragraphe 35(2) de la *Loi sur les pêches*, L.R.C. 1985, ch. F-14, à exploiter les ouvrages ou entreprises décrits aux présentes.

L'autorisation n'est valide qu'en ce qui concerne l'habitat du poisson et pour aucune autre fin. Elle ne dispense pas le requérant de l'obligation d'obtenir la permission d'autres organismes réglementaires concernés ou de se conformer à leurs exigences.

En vertu de la *Loi sur les pêches*, des accusations pourront être portées contre ceux qui ne respectent pas les conditions prévues dans la présente autorisation.

Cette autorisation doit être conservée sur les lieux des travaux, et les équipes de travail devraient en connaître les conditions.

Date of issuance _____

Approved by _____

Title _____

Date de délivrance _____

Approuvée par _____

Titre _____

ANNEX F

FINES AND SENTENCES FOR OFFENCES UNDER THE HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT*

Violation of sections 35 and 36

Summary Conviction— Every person who contravenes subsection 35(1), 36(1) or 36(3) and is guilty of an offence punishable on summary conviction is liable, for a first offence, to a fine to a maximum of $300,000, and for any subsequent offence to a fine up to a maximum of $300,000 and/or imprisonment up to six months.

Indictable Offence—Every person who contravenes subsection 35(1), 36(1) or 36(3) and is guilty of an indictable offence is liable, for a first offence, to a fine to a maximum of one million dollars and, for any subsequent offence, to a fine up to one million dollars and/or imprisonment up to three years.

Other Violations

Under subsection 40(3), the following offences are punishable on summary conviction for a first offence by a fine not exceeding $200,000 and for subsequent offences by a fine not exceeding $200,000 and/or imprisonment up to six months:

- failure to provide plans pursuant to subsection 37(1);
- failure to provide information required under regulations pursuant to subsection 37(3);
- failure to report a deposit of a deleterious substance pursuant to subsection 38(4);
- failure to carry out work in accordance with plans, specifications, orders, etc. pursuant to section 37;
- failure to take reasonable measures required to prevent or mitigate the deposit of a deleterious substance under subsection 38(5); and
- failure to comply with the directions of a Fishery Inspector pursuant to subsection 38(6).

Under section 66, every owner or occupier of an obstruction across or in any stream who refuses or neglects to provide and maintain a fishway or canal in accordance with section 20, to install and maintain fish stops or diverters in accordance with subsection 21(4) or to provide for a sufficient flow of water and the free passage of fish in accordance with section 22 is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding $200,000 and, for any subsequent offence, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or to both.

Under section 69, every owner or occupier of a water intake, ditch, channel or canal referred to in subsection 30(1) who refuses or neglects to provide and maintain a fish guard, screen, covering or netting in accordance with subsections 30(1) to (3), permits the removal of a fish guard, screen, covering or netting in contravention of subsection 30(3) or refuses or neglects to close a sluice or gate in accordance with subsection 30(4) is guilty of an offence punishable on summary

conviction and liable, for a first offence, to a fine not exceeding $200,000 and, for any subsequent offence, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding six months, or to both.

Section 78 of the *Act* specifies that except as otherwise provided for in the *Act* offenders are guilty of an offence, punishable on summary conviction and liable for a first offence, to a fine not exceeding $100,000 and for subsequent offences to a fine not exceeding $100,000 and/or imprisonment for up to one year; or guilty of an indictable offence, and liable for a first offence, to a fine not exceeding $500,000 and, for any subsequent offence, to a fine not exceeding $500,000 and/or to imprisonment for a term up to two years.

Under section 79.6, a person convicted of an offence under the *Act* who subsequently contravenes court orders made under sections 79.2 or 79.3 is guilty of an offence punishable on summary conviction and liable to a punishment not exceeding the maximum punishment to which a person is liable on summary conviction for the original offence, or in the case of an indictable offence, liable to a punishment not exceeding the maximum punishment to which a person is liable on conviction by way of indictment for the original offence.

ANNEX G

FOR INFORMATION

Anyone who has questions about this *Compliance and Enforcement Policy* or who wishes further information about enforcement or compliance promotion procedures or guidelines under the habitat protection and pollution prevention provisions of the *Fisheries Act* should contact one of the following:

Department of Fisheries and Oceans—Headquarters

Director General
Conservation and Protection
Fisheries Management
Department of Fisheries and Oceans
200 Kent Street
Ottawa, Ontario
K1A 0E6

Telephone: (613) 990-6012

Department of Fisheries and Oceans—Regional Offices

Newfoundland Region

Regional Director General
Newfoundland Region
Department of Fisheries and Oceans
P.O. Box 5667
St. John's, Newfoundland
A1C 5X1

Telephone: (709) 772-4417

Maritimes Region

Regional Director General
Maritimes Region
Department of Fisheries and Oceans
P.O. Box 550
Halifax, Nova Scotia
B3J 2S7

Telephone: (902) 426-2581

Laurentian Region

Regional Director General
Laurentian Region
Department of Fisheries and Oceans
104 Dalhousie Street
Québec, Quebec
G1K 7X7

Telephone: (418) 648-4158

Central and Arctic Region

Regional Director General
Central and Arctic Region
Department of Fisheries and Oceans
501 University Crescent
Winnipeg, Manitoba
R3T 2N6

Telephone: (204) 983-5118

Pacific Region

(includes Yukon Territory)
Regional Director General
Pacific Region
Department of Fisheries and Oceans
555 West Hastings Street
Vancouver, British Columbia
V6B 5G3

Telephone: (604) 666-6098

Gulf Region

Regional Director General
Gulf Region
Department of Fisheries and Oceans
343 University Avenue
P.O. Box 5030
Moncton, New Brunswick
E1C 9B6

Telephone: (506) 851-7750

Department of the Environment—Headquarters

Director
Enforcement Branch
National Programs Directorate
Environmental Protection Service
Environment Canada
351 St. Joseph Blvd.
17th Floor—Place Vincent Massey
Ottawa, Ontario
K1A 0H3

Telephone: (819) 953-1523

Department of the Environment—Regional Offices

Atlantic Region

Regional Director
Environmental Protection Branch
Atlantic Region
Environment Canada
45 Alderney Drive
5th Floor—Queen Square
Dartmouth, Nova Scotia
B2Y 2N6

Telephone: (902) 426-3593

Ontario Region

Regional Director
Environmental Protection Branch
Ontario Region
Environment Canada
4905 Dufferin Street
Downsview, Ontario
M3H 5T4

Telephone: (416) 739-5850

Pacific and Yukon Region

Regional Director
Environmental Protection Branch
Pacific and Yukon Region
Environment Canada
224 West Esplanade—5th Floor
North Vancouver, British Columbia
V7M 3H7

Telephone: (604) 666-0064

Quebec Region

Directeur régional
Direction de la protection de l'environnement
Région du Québec
Environnement Canada
105, rue McGill—4ième étage
Montréal (Québec)
H2Y 2E7

Téléphone : (514) 283-0178

Prairie and Northern Region

(includes Northwest Territories)
Regional Director
Environmental Protection Branch
Prairie and Northern Region
Environment Canada
4999—98th Avenue
Twin Atria #2—2nd Floor
Edmonton, Alberta
T6B 2X3

Telephone: (780) 951-8862